

Tab 38





UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 2  
290 BROADWAY  
NEW YORK, NY 10007-1866

MAR 23 2005

CERTIFIED MAIL  
RETURN RECEIPT REQUESTED

Peter Wallis  
Ameresco LFG-1, Inc.  
111 Speen Street, Suite 410  
Framingham, MA 01701

Re: Reopening of the Title V Permit for Al Turi LFGTE Facility  
DEC Permit ID 3-3330-00084/00026

Dear Mr. Wallis:

I am writing to inform you that EPA is issuing a notice to the New York State Department of Environmental Conservation ("DEC") to reopen the Al Turi LFGTE Facility ("Ameresco") title V permit for cause, pursuant to CAA §§ 505(e) and 40 C.F.R. § 70.7(g). The notice to DEC specifies that the Ameresco permit should terminate at the end of its permit term and not be renewed on April 8, 2005. The basis of this reopening is outlined within the single source section of the attachment in *In the Matter of Al Turi Landfill Inc.*, Petition Number: II-2002-13-B (January 22, 2004)<sup>1</sup> and within the single source determination made by EPA regarding Al Turi Landfill Inc. ("Al Turi") and Ameresco in the July 8, 2004 objection letter to DEC. (See, Enclosures 1 and 3.)

On January 21, 2004, pursuant to CAA 505(e) and 40 C.F.R. § 70.7(f)(iv), EPA made a finding that the Al Turi Landfill title V permit must be revised or revoked to assure compliance with the applicable requirements. On January 30, 2004, in response to a citizens administrative petition under CAA 505(b)(2), the Administrator objected in part to the Al Turi Landfill title V permit, and on July 8, 2004, under CAA 505(b)(1) EPA objected to the Al Turi Landfill Mod 1 proposed permit and also reminded DEC of the outstanding issues granted in the Administrator's January 30 Order. (See, Enclosures 1, 2, and 3.) The 90-day period for resolving EPA's objection signed January 30 expired on March 19, and the additional time allowed in the July 8 letter expired with the submittal on July 20 of a Mod 2 proposed permit. DEC has failed to fulfill its obligation to submit a revised permit meeting the requirements of the objections and the reopening for cause.<sup>2</sup> Therefore, Al Turi Landfill is now subject to the requirements of the EPA's

<sup>1</sup> Although the notice of dismissal of the untimely petition and the notice to reopen for cause are considered one action, they bear different dates. Both are included as Enclosure 1.

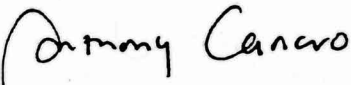
<sup>2</sup> When the Administrator objects to a permit under section 505(b)(1) or (2) of the Act, the permitting authority must, within 90 days of the objection, submit a revised permit meeting



Part 71 permitting program. Pursuant to CAA §§ 505(e) and 40 C.F.R. § 70.7(g), should DEC revise the Al Turi and Ameresco permits, recognizing both facilities as a single source, within 90 days of this reopening, EPA will not proceed with a Part 71 permit.

If you have questions or wish to discuss this further, please contact Mr. Steven C. Riva, Chief, Air Permitting Section at (212) 637-4074.

Sincerely,

  
for Kathleen C. Callahan  
Acting Regional Administrator

Enclosures

Denise Sheehan, Acting Commissioner, NYSDEC, Albany  
David Shaw, Director, Division of Air Resources, NYSDEC, Albany  
Margaret Duke, Regional Permit Administrator, NYSDEC, Region 3  
Robert Stanton, Regional Air Pollution Control Engineer, NYSDEC, Region 3  
Joseph Gambino, Al Turi Landfill  
Jason Babbie, New York Public Interest Research Group  
Gary Abraham, Esq.

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the requirements of the objection. If, pursuant to section 505(e) of the CAA and 40 C.F.R. § 70.7(f)(iv), the Administrator determines that the permit must be revised or revoked to assure compliance with the applicable requirements, the permitting authority must, "within 90 days after receipt of such notification, forward to the Administrator . . . a proposed determination of termination, modification, or revocation and reissuance, as appropriate." CAA § 505(e). Under section 505(e), the permitting authority may be granted an additional 90 days in certain circumstances.





UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 2  
290 BROADWAY  
NEW YORK, NY 10007-1866

Enclosure 1

JAN 22 2004

Gary A. Abraham, Esq.  
170 No. Second Street  
Allegany, New York 14706

Re: In the Matter of Al Turi Landfill, Inc.  
Petition Number: II-2002-13-B

Dear Mr. Abraham:

On October 8, 2002, the Environmental Protection Agency, Region 2 ("EPA") received a petition which you submitted on behalf of Citizens Who Care, Inc. ("CWC") requesting that EPA object to the proposed title V state operating permit, pursuant to § 505(b)(2) of the Clean Air Act ("CAA"), 42 U.S.C. § 7661d(b)(2), and 40 C.F.R. § 70.8(d), for the Al Turi Landfill. The Landfill permit was issued by the New York State Department of Environmental Conservation ("DEC") to Al Turi Landfill Inc. ("the Landfill"), and took effect on August 7, 2002.

The petition period for the Landfill permit ended October 3, 2002, the sixtieth day from the last day of the EPA 45-day review period that commenced June 20, 2002. In a letter to you dated October 21, 2002, Regional Administrator Kenny acknowledged receipt of the CWC petition on October 8, 2002. The petition itself bears no date. In a letter dated April 29, 2003, to Administrator Whitman, you argued that October 5, 2002, was the sixtieth day of the petition period and, since that was a Saturday, the regulations provide for extension of the petition period to October 7, 2002. You contended that, since you initiated shipping of the petition via FedEx to EPA on October 7, the petition is timely. EPA disagrees and holds to October 3, 2002, as the last day of the petition period. For these reasons EPA deems the petition untimely, pursuant to both CAA § 505(b)(2) and 40 C.F.R. § 70.8(d).

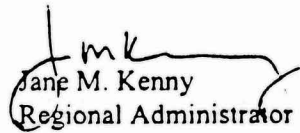
However, based on our review of the petitions from CWC and from the New York Public Interest Research Group, Inc., EPA will be issuing a notice to DEC to reopen the permit for cause directly following this letter, pursuant to CAA § 505(e) and 40 C.F.R. § 70.7(g). The notice to DEC will provide specific instructions on how to modify the permit. The modified permit will

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be substantially changed, thus warranting another public comment period. This decision is based on a thorough review of the August 7, 2002 permit and other documents that pertain to the issuance of this permit.

Sincerely,

  
Jane M. Kenny  
Regional Administrator

cc: David Shaw, Director, Division of Air Resources, NYSDEC, Albany  
Robert Starton, Permit Administrator, NYSDEC, Region 3

Tracy A. Peel  
New York Public Interest Research Group, Inc.  
9 Murray Street, 3<sup>rd</sup> Floor  
New York, New York 10007